

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.G., Appellant** )

**and** )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, FEDERAL AIR** )  
**MARSHAL SERVICE, Houston, TX, Employer** )  
\_\_\_\_\_ )

**Docket No. 24-0874**  
**Issued: September 25, 2024**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 28, 2024 appellant filed a timely appeal from an August 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish ratable hearing loss, warranting a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 25, 2024 appellant, then a 53-year-old criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and tinnitus due to factors of his federal employment resulting from prolonged exposure to hazardous noise. He noted that he first became aware of his condition on January 1, 2006 and realized its relationship to his federal employment on December 11, 2023. Appellant was separated from employment on February 13, 2012.

In support of his claim appellant submitted an employment history noting that he fired multiple weapons for 12 years and served as a firearms instructor for 10 years. From 1996 through 2002 he worked as a deportation officer where he was exposed to firearm noise exposure and was provided earmuffs for hearing protection. From 2000 through 2002 appellant was a certified firearms instructor providing firearms instruction to agents and was exposed to firearm noise. From 1997 through 2002 he worked as a commander of a special response team providing firearms training for team members during night fire qualifications and was exposed to firearm noise. From 2002 through 2009 appellant worked as an air marshal participating in 50 hours of in-flight training a week and was exposed to aircraft noise. In 2005, in response to Hurricane Katrina, he flew numerous helicopter missions to evacuate residents and was exposed to aircraft noise where he was not provided hearing protection.

In a statement dated February 8, 2024, appellant reported noticing his hearing loss in 2006 after firearms training. He indicated that 12 years of firing multiple weapons as an officer, 10 years as a firearms instructor, and flying nearly a million miles of pressurized cabin pressure increased and expedited his hearing loss.

In a development letter dated February 14, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter dated March 7, 2024, it requested that the employing establishment provide additional information regarding his exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. OWCP afforded the employing establishment 30 days to respond.

OWCP received additional evidence. Appellant submitted an audiogram dated December 11, 2023 signed by Courtney Bel, an audiologist.

On April 16, 2024 the employing establishment challenged appellant's claim.

On April 18, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Kourtney Clark, a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of appellant's hearing loss.

On May 3, 2024 Dr. Clark reviewed the SOAF, history of injury and medical evidence of record. In her report dated May 7, 2024, she noted that appellant's hearing was normal at the start

of his federal employment. However, over the course of his employment, appellant's duties resulted in bilateral mild high frequency sensorineural hearing loss from his federal employment-related noise exposure. Dr. Clark diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure at work. She obtained audiology testing, which revealed the following decibel (dBs) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 20, 15, 15, and 40 dBs for the right ear and 20, 20, 15, and 25 dBs for the left ear, respectively. Dr. Clark recommended noise protection and hearing aids.

Dr. Clark referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> and applied OWCP's standard for evaluating hearing loss to the May 3, 2024 audiogram and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and four percent binaural hearing loss due to tinnitus. She reported appellant's right ear hearing loss of 20, 15, 15, and 40 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 90, and divided by 4, to find an average of 22.5. As the average fell below the 25 dBs fence, Dr. Clark found zero percent right ear monaural hearing loss. For the left ear, she added appellant's hearing loss of 20, 20, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 80, and divided by 4 to find an average of 20. As the average fell below the 25 dBs fence, Dr. Clark found zero percent left ear monaural hearing loss. As she calculated a monaural loss of zero percent in each ear, she found a binaural hearing loss of zero percent. Dr. Clark completed a tinnitus handicap inventory and rated the tinnitus diagnosis at four percent. She arrived at a total binaural hearing impairment rating of four percent permanent impairment due to severe tinnitus. Dr. Clark concluded that appellant reached maximum medical improvement (MMI) on May 3, 2024.

By decision dated July 1, 2024, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On July 1, 2024 OWCP referred the medical record and SOAF to Dr. Herbert White, Jr., a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

In a July 6, 2024 report, Dr. White reviewed the evidence of record and applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*<sup>3</sup> to Dr. Clark's report and May 3, 2024 audiology findings. He determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and binaural hearing loss of zero percent, noting that a tinnitus award of four percent could not be given as there was no ratable binaural hearing loss. Dr. White averaged appellant's right ear hearing levels of 20, 15, 15, and 40 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum by 4, which equaled 22.5. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. White then averaged appellant's left ear hearing levels 20, 20, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Id.*

levels then dividing the sum by four, which equaled 20. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. White then calculated zero percent binaural hearing loss by multiplying the right ear loss of zero percent by five, adding the zero percent left ear loss, and dividing this sum by six. He opined that he concurred with Dr. Clark's calculations, other than her rating for four percent binaural hearing loss for tinnitus. Dr. White noted that a tinnitus award cannot be rendered when there is a zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.<sup>4</sup> He determined that appellant had reached MMI on May 3, 2024, the date of the most recent audiogram and Dr. Clark's examination.

By decision dated August 7, 2024, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>5</sup> and its implementing federal regulations,<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter, which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants.

The sixth edition of the A.M.A., *Guides*<sup>7</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>8</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>9</sup> With respect to a schedule award, it is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury.<sup>10</sup>

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<sup>4</sup> *Id.* at 249.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>8</sup> *W.R.*, Docket No. 22-0051 (issued August 9, 2022); *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

<sup>9</sup> *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>11</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>12</sup> Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>13</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>14</sup> The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>15</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>16</sup>

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.<sup>17</sup> If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>18</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>19</sup> It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>20</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

OWCP referred appellant to Dr. Clark for a second opinion examination to evaluate his hearing loss. In her May 7, 2024 report, Dr. Clark diagnosed bilateral sensorineural hearing loss

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<sup>11</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>12</sup> *Id.* at 250.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted* (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

<sup>17</sup> *Supra* note 11 at 249.

<sup>18</sup> *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); see also *Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>19</sup> See *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>20</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

and bilateral tinnitus. She opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Clark determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of four percent for tinnitus.

In its July 1, 2024 decision, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus. On July 1, 2024 it forwarded appellant's medical record to Dr. White, OWCP's DMA to assess his percentage of permanent employment-related hearing loss.

The DMA, Dr. White, in a report dated July 6, 2024, reviewed Dr. Clark's report, and determined that appellant had zero percent monaural hearing loss in each ear. He related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 20, 15, 15, and 40 dBs for the right ear, respectively, and 20, 20, 15, and 25 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 90 and divided by 4 to obtain an average hearing loss of 22.5. The decibel losses for the left ear were totaled at 80 and divided by 4 to obtain an average hearing loss of 20. After subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent.

The Board finds that the DMA, Dr. White, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.<sup>21</sup> Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>22</sup>

The Board further finds that the DMA correctly explained that tinnitus may not be included with an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.<sup>23</sup> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.<sup>24</sup>

As the medical evidence of record is insufficient to establish ratable hearing loss, warranting a schedule award, the Board finds that appellant has not met his burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

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<sup>21</sup> *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

<sup>22</sup> *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *see W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

<sup>23</sup> *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

<sup>24</sup> *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a ratable hearing loss warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board